



RIGHTS STUFF

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Supervisors Need To Follow Sexual Harassment Policies

A recent case from Illinois shows how important it is for employers to follow their sexual harassment policies and to report any incidents they witness.

Dalia Sacramento began working for the City of Chicago in 1990. Her job title was Supervisor of Investigators. She sometimes supervised an investigator named Leonard Biszewski.

Beginning in 2005, Biszewski routinely called Sacramento "bonita," which means "pretty" in Spanish. She found that to be "very inappropriate" because she was his supervisor. She told him, "That's not my name" and "don't call me that." She told her supervisor, Nicholas Giannoules, that she didn't like Biszewski calling her that.

In the fall of 2005, Biszewski tried to hug Sacramento. She told him, "Don't touch me. That's considered sexual harassment." He did not actually hug her. She told Giannoules about the attempted hug and said, "if anything happens again I will file a sexual harassment charge against him." The City's policy says that if a supervisor receives a report of sexual harassment, he is supposed to report it to the City's Sexual Harassment Office. Giannoules did not report this because he didn't consider

Biszewski's actions to be sexual harassment.

Biszewski also hugged Giannoules, a man, and another female co-worker. Neither objected. He engaged in other behavior that might be considered inappropriate in the workplace. When a woman asked him over the radio, which everyone could hear, "What's up," he answered, "Woody." He was verbally reprimanded for this. He also displayed a "sexually explicit cardboard cut-out of a woman in a bikini" in his cubicle until someone told him to take it down.

In August, 2006, Sacramento was leaving a mandatory ethics training. Biszewski approached her and slapped her four times across her cheeks with the front and back of his hand. She described this as a "three stooges" type of slap. He then hugged her in a tight bear hug, so tightly she could not move her arms. She told him to let her go, but he held on until Giannoules told him to let her go. Sacramento filed an internal complaint and the City investigated.

The City found that Biszewski had violated the City's sexual harassment policy and suspended him without pay for thirty days.

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Sexual Harassment Policies (Continued from page 1)

The suspension did not take place until February, 2007, after he had exhausted his rights under the union contract.

Between the time of the incident and his suspension, Sacramento had no more interaction with Biszewski. He was ordered not to have contact with her. Sometimes their shifts overlapped, and when this happened, she stayed in her office.

In October, 2006, Giannoules mediated a work-related dispute between Sacramento and another supervisor. After the meeting, Sacramento became angry and swore at Giannoules. There was discussion about disciplining her for swearing at her supervisor, but she was not disciplined. A few days later, she was verbally counseled about leaving work early without getting permission to do so.

Ten days later, Sacramento went on vacation. Then she went on medical leave. She never re-

turned to work for the City. She submitted a resignation letter in February and filed a complaint of sex discrimination and retaliation in March, which eventually went to court.

The City argued that Biszewski's actions were not sexual harassment because he did similar things to both men and women. The Court said that calling Sacramento "bonita," hugging her tightly, making the comment over the intercom and having the cardboard cut-out in his office were enough that a reasonable jury might find his actions to be motivated by sex.

The Court also said that the actions, combined, were enough for a jury to find that he had created a hostile work environment.

The City argued that it should not be liable because it took prompt corrective action once Sacramento filed her internal complaint. The Court said that a jury could find that Giannoules

should have taken action sooner, once he saw Biszewski try to hug Sacramento.

The Court found that the City had not retaliated against Sacramento for filing her complaint. Contemplating reprimanding her for cursing at a supervisor and verbally counseling her for leaving work early were not enough to create an adverse employment action.

And the Court found that Sacramento had not been constructively discharged. As the Court noted, "Absent extraordinary circumstances, an employee is expected to remain employed while seeking redress." She was not harassed again after she filed her formal complaint. The Court found "that Sacramento's decision to not return to work after taking a scheduled vacation and medical leave was voluntary."

The case is Sacramento v. City of Chicago and Leonard Biszewski, 2010 WL 2740305 (N.D. Ill. 2010). ♦

Shaved Legs Night

Some jurisdictions have held that bars are discriminating on the basis of sex when they have ladies' nights, offering a discount to female customers.

In the spring of 2010, the City of Gainesville, Florida, sent out letters to 115 alcohol-serving establishments telling them that

from now on, Ladies' Night drink specials would be considered to be a violation of its anti-discrimination ordinance.

Several Gainesville bars responded to this interpretation of the law in a creative way. Some stopped offering discounts to women, but instead

offered discounts to anyone with shaved legs. Others offered discounts to anyone wearing high heels. The manager of one bar, Grog House, said that about five men had shown up with shaved legs since he changed the discount rule, and they received the discount. ♦



Woman Loses Summary Judgment Motion In Race Discrimination Case

Veronica Villagomez, who is Latina, began working for Sherman Hospital in 1998 as a receptionist. She moved into the human resources benefits department, where her duties included tracking performance appraisals, processing pay increases and communicating with employees about their benefits.

Late in 2007, supervisors told the benefits group that their jobs were being restructured and that they would lose their jobs as of January 4, 2008. But shortly after, one of the supervisors asked Villagomez if she would stay on for a while to help with the transition. She agreed and asked for additional severance or a bonus for doing so. Her supervisor told her she would look into that, but before she got an answer, she resigned.

During Villagomez' extended job, she applied for the new HR jobs. The hospital said it did not hire her because she was not qualified. She said the hospital did not hire her because of her race. She resigned at the end of March, 2008 and filed a race discrimination lawsuit. The hospital won its motion for summary judgment.

She claimed in her lawsuit that the hospital gave "systematically better treatment" to similarly-situated non-Hispanic employees." Her evidence: a supervisor once told co-workers that she saw "a little black boy on a bicycle in her neighborhood and because she didn't know what he was doing there her father followed him and discovered that he was there for some type of game." The same supervisor once said that Hispanics color their houses with "funny colors," that she had "never seen a Hispanic with a good education" and that her family is "pure white, not mixed." Villagomez could not recall when these comments were made except for the first one, which she said was made close to the time of the HR restructuring. The Court said several comments made over a period of time were not enough to support an inference that the supervisor was biased against Latinos.

The Court also found that Villagomez did not meet the qualifications for the new job. The job description called for a bachelor's degree in human resources or business administration or an associate's degree with at least three years of progressive experience in the field. She did not have that; the successful candi-

dates did. Her subjective belief that she was qualified was not enough to defeat the hospital's summary judgment motion. And the Court found that the hospital's failure to pay her extra for her extended work was not discriminatory. The only employees who received extra pay were all white, but they were all managers, and she was not. She did not have evidence that any non-Hispanic, non-manager employees received extra pay.

And finally, the Court did not find that Villagomez had been subjected to a hostile work environment. The Court said, "Viewed favorably to plaintiff, the record suggests that she heard a few insulting comments over a period of years and performed extra duties for the first quarter of 2008, circumstances that do not constitute an objectively hostile environment." As the Court said, "only a 'hellish' workplace is actionable," and her workplace was not quite that bad.

The case is Villagomez v. Sherman Hospital, 2010 WL 2788184 (N.D. Ill. Dt. Ct. 2010).

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Bullying Lawsuit Settled

A gay teenager in upstate New York said that he was relentlessly bullied by classmates while school administrators stood by and did nothing. He sued, and recently settled the case for \$50,000.

The boy, whose name has not been publicized, said that school officials did virtually nothing to stop the bullies who repeatedly picked on him because he did not act like the other boys.

Under the settlement, the school district, Mohawk Central School District, agreed to implement changes to protect students from

harassment, including additional staff training. The district will report on its progress to the New York Civil Liberties Union, which represented the boy, and to federal justice officials. In addition to the \$50,000, the district will reimburse the boy's family for counseling services, Mohawk did not admit to any wrongdoing.

The boy has since moved to a neighboring school district, where he said is much happier. His father said the money is for his son's future and he hopes that the settlement will inspire other districts to change. He

said, "Maybe this can be a door-opener for other schools."

Mohawk's superintendent, Joyce Caputo, said that the district staff would never knowingly discriminate or tolerate bullying and remain committed to fostering a culture of tolerance and respect. She said, "We recognize there is always room to learn and improve—and we intend to do just that."

Article based on AP wire story, "Gay Student Settles Lawsuit Against NY District," March 29, 2010. ♦

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